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5 UNITED STATES DISTRICT COURT  
6 EASTERN DISTRICT OF WASHINGTON  
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8 MARCO PEREZ GARNICA,  
9 Petitioner,  
10 vs.  
11 RON FRAKER,  
12 Respondent.

NO. CV-11-008-JPH

**ORDER DENYING MOTION FOR  
RECONSIDERATION**

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14 BEFORE THE COURT is Petitioner's Motion for Reconsideration, ECF  
15 No. 25, whereby he appears to be asserting the District Court should  
16 issue a certificate of appealability. Petitioner did not note his  
17 motion for hearing as required by LR 7.1(h), Local Rules for the Eastern  
18 District of Washington. Because Petitioner is proceeding *pro se* the  
19 Court noted his motion on the date signed below. **PETITIONER IS**  
20 **CAUTIONED THAT ANY FURTHER MOTIONS SUBMITTED TO THE COURT WITHOUT NOTING**  
21 **THEM FOR HEARING IN COMPLIANCE WITH THE LOCAL RULES WILL NOT BE**  
22 **ADDRESSED BY THE COURT.**

23 By Order filed May 27, 2011, ECF No. 23, the Court denied Mr.  
24 Garnica's Motion for Equitable Tolling and dismissed the petition as  
25 time barred under 28 U.S.C. § 2244(d). The Court also found no basis to  
26 issue a certificate of appealability under 28 U.S.C. § 2253(c); Fed. R.  
27 App. P. 22(b). Petitioner now attempts to re-allege the claims of his

1 federal habeas petition which has been deemed time-barred.

2       Motions for reconsideration serve a limited function. "[T]he major  
3 grounds that justify reconsideration involve an intervening change of  
4 controlling law, the availability of new evidence, or the need to  
5 correct a clear error or prevent manifest injustice.'" *Pyramid Lake*  
6 *Paiute Tribe v. Hodel*, 882 F.2d 364, 369 n.5 (9th Cir. 1989). Such  
7 motions are not the proper vehicle for offering evidence or theories of  
8 law that were available to the party at the time of the initial ruling.  
9 *Fay Corp. v. Bat Holdings I, Inc.*, 651 F.Supp. 307, 309 (W.D. Wash.  
10 1987).

11       In the instant case, Petitioner has not alleged that there has been  
12 an intervening change of controlling law. Likewise, he has not offered  
13 newly-discovered evidence that would justify this Court taking a second  
14 look at the issue in question. Thus, the only remaining question is  
15 whether the Court should alter its prior ruling in order to "correct a  
16 clear error or prevent manifest injustice." *Pyramid Lake*, 882 F.2d at  
17 369 n.5. Petitioner's failure to demonstrate impediments which made it  
18 impossible for him to timely file a federal habeas petition, or the  
19 diligent pursuit of his rights, do not warrant equitable tolling of the  
20 federal limitations period under 28 U.S.C. § 2244(d), see *Pace v.*  
21 *DiGuglielmo*, 544 U.S. 408, 418 (2005). The Court already determined  
22 there was no basis upon which to issue a certificate of appealability.

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Accordingly, **IT IS ORDERED** Petitioner's Motion for Reconsideration, ECF No. 25, is **DENIED**.

IT IS SO ORDERED. The District Court Executive is directed to enter this Order and to provide a copy to Petitioner.

**DATED** this 27th day of June 2011.

s/ Edward F. Shea  
EDWARD F. SHEA  
UNITED STATES DISTRICT JUDGE

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